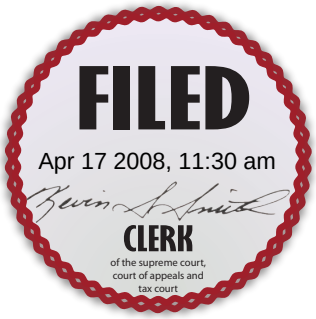

ATTORNEY FOR APPELLANT:

BRYAN M. TRUITT
Bertig & Associates, LLC
Valparaiso, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MELBURNE LEITZOW,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 64A03-0711-CR-521
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable William E. Alexa, Judge
Cause No. 64D02-0610-FB-9627

April 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Melburne Leitzow appeals his sentence following his convictions for Child Molesting, as a Class B felony, and Child Molesting, as a Class C felony, pursuant to a plea agreement. He presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 2006, Leitzow lived with his wife, their minor daughter, K.L., and a minor girl, C.N.[1] Both K.L. and C.N. were under the age of fourteen. Sometime between May and October of that year, Lietzow molested K.L. by fondling her breasts and digitally penetrating her anus. Also during that period of time, Lietzow molested C.N. by fondling her breasts and vagina.

The State charged Leitzow with three counts of child molesting. Lietzow pleaded guilty to two counts of child molesting, one as a Class B felony and the other as a Class C felony, and the State dismissed the remaining charge. The plea agreement left sentencing open to the trial court's discretion. The trial court entered judgment and sentenced Leitzow to consecutive sentences of ten years and four years, respectively. This appeal ensued.

DISCUSSION AND DECISION

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[]

[1] The record does not reveal the circumstances that led to C.N. living with the Leitzow family.

independent appellate review and revision of a sentence imposed by the trial court." Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)) (alteration original), clarified in part on other grounds, 875 N.E.2d 218 (Ind. 2007). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Under Appellate Rule 7(B), we assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Anglemyer, 868 N.E.2d at 494 (quoting Childress, 848 N.E.2d at 1080) (alteration in original).

Leitzow contends that his sentence is inappropriate in light of the nature of the offenses and his character. With regard to the first factor, Leitzow asserts that "[t]he nature of this crime is as minimal as can be and still satisfy the statute." Brief of Appellant at 8. He maintains that he did not use violence or the threat of violence to complete the crimes and that "[t]here was no risk of a sexually transmitted disease." Id. In addition, Leitzow contends that "the imposition of consecutive sentences was inappropriate."[2] Id. at 10. Finally, Leitzow asserts that "it was inappropriate to not suspend any of [his] sentence." Id. at 9.

But Leitzow held a position of trust with each victim, which the trial court properly identified as an aggravator. That fact, alone, would justify the maximum

[2] Leitzow explains that he is limiting this contention to the issue of appropriateness, rather than challenging whether the trial court erred when it imposed consecutive sentences. As such, our review is limited to an analysis under Indiana Appellate Rule 7(B).

sentence, which Leitzow did not receive. See Hart v. State, 829 N.E.2d 541, 544 (Ind. Ct. App. 2005) ("Abusing a position of trust is, by itself, a valid aggravator which supports the maximum enhancement of a sentence for child molesting."). We cannot say that the nature of the offenses supports a lesser sentence. In addition, because there are multiple victims here, the imposition of consecutive sentences was not inappropriate. See Sanquenetti v. State, 727 N.E.2d 437, 443 (Ind. 2000). And the trial court left open the possibility of suspending a portion of the aggregate sentence in the future if Leitzow could find a program "that will accept him." Transcript at 24. Leitzow has not demonstrated that the trial court's refusal to suspend a portion of his sentence, at this time, is inappropriate.

Leitzow also contends that his character is good and supports a revised sentence.[3] In particular, he asserts that he has no criminal history; he promptly admitted to his crimes and expressed remorse; and he has a strong employment history. But, again, that Leitzow violated a position of trust with his victims reflects poorly on his character. And, again, the trial court did not impose the maximum sentence. We cannot say that imposition of consecutive advisory sentences is inappropriate in light of the nature of the offenses and his character.

Affirmed.

SHARPNACK, J., and DARDEN, J., concur.

[3] To the extent Leitzow contends that the trial court should have given greater mitigating weight to his lack of criminal history, that issue is not available on appellate review. See Anglemyer v. State, 868 N.E.2d 482, 490-91 (Ind. 2007) (holding "the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion."), clarified in part on other grounds, 875 N.E.2d 218 (Ind. 2007).